MILAN S. PAPULAK

IBLA 77-122 Decided May 26, 1977

Appeal from decisions of the Utah State Office, Bureau of Land Management, requiring that special stipulations be executed as a condition precedent to the issuance of certain oil and gas leases. U-33032 and U-33283 through U-33288.

Affirmed.

1. Oil and Gas Leases: Stipulations

> The Secretary of the Interior may require an offeror for a noncompetitive oil and gas lease to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of a lease. A stipulation requiring lessee, at his own expense, to make an inventory of archeological and historical sites on those areas of the leased lands which he proposes to enter for purposes of exploration or drilling and to agree to reasonable conditions of use designed to protect any valuable sites or objects disclosed by the inventory is reasonable and will be upheld.

APPEARANCES: Milan S. Papulak, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Milan S. Papulak has appealed from separate decisions of the Utah State Office, Bureau of Land Management (BLM), dated December 13, 14 and 21, 1976, requiring that certain stipulations be executed as a condition precedent to issuance of oil and gas leases U-33032, and U-33283 through U-33288. 1/

1/ The BLM decision requiring the execution of stipulations for lease U-33032, also rejected a portion of the noncompetitive lease offer because such land had been included in prior oil and gas lease U-32895. No mention of the partial rejection was made in the statement of reasons, therefore, that part of the decision is final.

Appellant filed noncompetitive oil and gas lease offers U-33032 and U-33283 through U-33288 in March and April 1976. All or part of the lands covered by each of the lease offers were located in the Fishlake National Forest.

By letter dated December 1, 1976, the Acting Regional Forester advised BLM that the Forest Service had no objection to the issuance of various oil and gas leases, including the leases set forth above, provided that certain stipulations were made a part of leases.

BLM subsequently issued the decisions requiring execution of the stipulations recommended by the Forest Service.

On appeal appellant asserts that the stipulation requirement violates his "rights as provided me by the Lease Terms specified in my Offer to Lease." He specifically objects to the Surface Occupancy Stipulation (USO Form 3100-8, February 1976), section 1(b) which requires the lessee, at his own expense, to make an inventory of archeological, paleontological, and historical sites in those areas. Appellant contends that such a requirement inhibits exploration to an extent that "today it is virtually impossible to operate on federal lands."

[1] In response to appellant's general complaint, it is well established that the Secretary of the Interior may require an applicant for an oil and gas lease on federal lands to accept stipulations reasonably designed to protect environmental and other land values as a condition precedent to issuance of a lease. 43 CFR 3109.2-1; Cecil A. Walker, 26 IBLA 71 (1976); W. E. Haley, 25 IBLA 311 (1976). In the leasing of national forest lands, the Department will give careful consideration to the recommendations of the Forest Service, but the Forest Service does not have final authority over leasing public domain. W. E. Haley, supra at 314; Richard P. Cullen, 18 IBLA 414 (1975).

The relevant part of the Surface Occupancy Stipulation complained of by appellant reads as follows:

> 1. Lessee agrees not to enter upon the lease area or disturb the surface for exploration or drilling purposes until either:
>
> (a) An inventory of archeological, paleontological, and historical sites is made by the surface management agency or its designated representative, or
>
> (b) Lessee has made or caused to be made an inventory of all archeological, paleontological, and historical sites in those areas of the lease subject

> to development, occupancy, or surface disturbances. The survey must be made by a qualified archeologist acceptable to the surface management agency and the results of this survey provided to the surface management agency. Costs of this survey will be borne by the lessee. After inventory by either lessee's archeologist or the surface management agency, reasonable conditions of use will be prepared to protect the sites or salvage objects of antiquity in accordance with the Antiquities Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431), and the Historical Sites Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461-467). Costs of salvage of artifacts will be borne by the lessee and all objects of antiquity salvaged will remain the property of the U.S. Government.

The exact language of such stipulation was considered by this Board in W. E. Haley, supra. After a recitation from the statutes which establish the authority for the Department's involvement in the protection of archeological values, 2/ the Board held at 314 that:

> The statutes referred to above establish the authority for the protection of archeological and historical sites and objects in the public interest. The stipulation in this case appears both necessary and appropriate to avoid inadvertent destruction of such sites or objects. For these reasons, we find that the stipulation involved here is a reasonable one which should be upheld in the public interest.

We find such rationale apposite to the case at bar and we reject appellant's argument.

Appellant also argues that while he has no objection if the Government desires to conduct archeological investigations and salvage work, he feels the Government should bear the expense. The Department's position is clear that the financial burden of complying with protective stipulations in oil and gas leases is the sole responsibility of the lessee. Duncan Miller, 24 IBLA 203 (1976); Bill J. Maddox, 24 IBLA 147 (1976). The fact that the lessee may have to bear the cost of the inventory does not make the stipulation objectionable. Bill J. Maddox, supra.

2/ The Antiquities Act of June 8, 1906, 16 U.S.C. §§ 431, 432 (1970), and the Historic Sites Act of August 21, 1955, 16 U.S.C. § 461 et seq. (1970).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge